IBLA 70-2 Decided June 28, 1972

UNITED STATES SMELTING REFINING AND MINING COMPANY	:	Contest C-03874-B (585-8) Contest C-03881-A (585-9) Contest C-03835 (585-10)
V.		Contest C-03876-A (585-11) Contest C-03877 (585-12) Contest C-03874-A (585-13)
TELL ERTL JOHN SAVAGE, CHARLES F. RAUMAN, Administrator, AGNES CHURCHILL, and WALTER HAMILTON.		

IBLA 70-2a

CHARLES F. RAUMAN,	:	C-099641-A
ADMINISTRATOR OF THE ESTATE	:	099647-A
OF IDA L. RAUMAN, Deceased.		

IBLA 70-2b

UNION OIL COMPANY	:	C-0101341-A etc.
OF CALIFORNIA :		0102689-A etc.

IBLA 70-2c

EQUITY OIL COMPANY	:	C-099640-A
	:	099646-A

IBLA 70-2d

JOHN W. SAVAGE	:	C-079626-A
	:	079627-A
	:	079628-A

Separate appeals from decisions relating to the effect of a verified statement or stipulations filed in proceedings initiated under the Multiple Mineral Development Act.

Reversed or modified and remanded.

Mining Claims: Contests -- Mining Claims: Determination of Validity

> Determinations of invalidity of interest in mining claims are of no effect when the determinations were the result of contest proceedings wherein the complaints were not served on the holders of such interests.

Multiple Mineral Development Act: Generally

> Proceedings under the Multiple Mineral Development Act, 30 U.S.C. § 521 et seq. (1970), will be suspended until final decisions are rendered in proposed Government contest proceedings against the same mining claims.

Multiple Mineral Development Act: Hearings -- Multiple Mineral Development Act: Verified Statement

> No hearing pursuant to the Multiple Mineral Development Act will be held with respect to rights asserted by a verified statement in a proceeding under the Act to the extent such rights are defined by a stipulation entered into pursuant to section 7(c) of the Act; however, such stipulation does not preclude the Department of the Interior from instituting contest proceedings to determine the existence of such rights.

OPINION BY MR. FRISHBERG

The holders of federal oil and gas leases issued pursuant to the Mineral Leasing Act, 30 U.S.C. § 181 et seq. (1970), requested a determination of the existence and validity of claims to Leasing Act minerals asserted under unpatented mining locations made prior to August 13, 1954, affecting lands within the leases in accordance with the Multiple Mineral Development Act of that date, 30 U.S.C. § 521 et seq. (1970) (referred to hereafter as PL 585), and the regulations which are now in 43 CFR Part 3740 (1972). By separate decisions of the hearing examiner or land office manager, the verified statements were rejected, in whole or in part, because the mining claims involved had been declared void in earlier contest proceedings. A further issue before the hearing examiner was the

effect, if any, of stipulations entered into pursuant to section 7(c) of PL 585, 30 U.S.C. § 527(c).

Before proceeding, we note that none of the leases covered in this decision are in a producing status; the payment of rentals and the running of time under the leases have been suspended as to the lands in conflict. 30 U.S.C. § 226(h) (1970); 43 CFR 3101.1-6. We further invite the attention of the parties to the secretarial directive to the Director, Bureau of Land Management, of April 17, 1964, and its continuing efficacy, providing, in pertinent part, that

> For the protection of both the public interest and interests of those who may have valid rights to the lands in question, the Bureau is directed to identify all remaining unpatented oil shale mining claims in the States of Colorado, Wyoming and Utah, and to begin proceedings in each case in which it appears that the claim may be invalid. As to such cases which are not now the subject of contest or of patent application, the Bureau will, as soon as possible, initiate proceedings to test the adequacy of the discovery on which the claim is based and to assert any other ground for contest which might be justified by the facts.

The United States ordinarily is not a party to a PL 585 proceeding, and a decision emanating therefrom cannot bind the Government unless it voluntarily joins therein as a party. Nor can the parties create rights by an agreement under section 7(c) if there are no rights recognizable by this Department. The Secretary of the Interior is charged with the duty to ascertain whether "valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved." Cameron v. United States, 252 U.S. 450, 460 (1920). The fact that PL 585 proceedings have been initiated or terminated does not preclude this Department from ascertaining whether the mining claims are valid or from instituting contest proceedings under the general authority of the Secretary to determine the validity of mining claims. Arthur L. Rankin, 73 I.D. 305 (1966). The results of any such proceeding would be determinative of the issues in a PL 585 proceeding.

In Energy Resources Technology Land, Inc., A-30311-C (July 25, 1969), the Bureau of Land Management was directed to suspend action on verified statements pending the final determination of the validity of mining claims. We adhere to the principle that where the validity of mining claims is challenged by the Government no purpose can be served by a PL 585 hearing, and that all action on the mining claims

listed in a verified statement should be suspended pending the ultimate determination of validity. However, any verified statement to which the parties have stipulated must be considered and acted upon in accordance with the mandate of section 7(c) that

> * * * If at any time prior to a hearing the person requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by that particular published notice.

It follows that the interests of the parties, to the extent stipulated, are not affected by the published notice, and no hearing under PL 585 will be required. As noted above, this in no way creates or affects any rights of the United States.

The appellants assert that the former declarations of invalidity of the several mining claims were not effective and are not binding. This argument must be sustained to the extent indicated below. See Union Oil Company of California et al., 71 I.D. 169 (1964); 72 I.D. 313 (1965); Hickel v. Oil Shale Corporation et al., 400 U.S. 48 (1970); Gabbs Exploration Company, 67 I.D. 60 (1960), aff'd, Gabbs v. Udall, 315 F.2d 37 (D.C. Cir. 1963), cert. den. 375 U.S. 822 (1963). These and the cases cited therein discuss the obligation of the locator to perform annual assessment work and the need for all mining claim holders of record to be made party to the earlier proceedings in order that the decisions rendered may be effectual as to their interests in the mining claims involved. 1/

1/ The headnotes 1 and 5 in Hickel v. Oil Shale Corp., 400 U.S. 48, 27 L. Ed. 2d 193 (1970), read as follows:

"1. Assessment work on oil shale mining claims that does not Substantially meet the requirements of the General Mining Act of 1872 (30 USC § 28), which provides that until a patent issues, at least $100 worth of labor and improvements must be expended on each claim 'during each year,' is not sufficient to 'maintain' the claims within the meaning of the savings clause of § 37 of the Mineral Lands Leasing Act of 1920 (30 USC § 193), which makes available for patent, instead of only leasing, valid pre-existing claims that are 'maintained in compliance with the laws under which initiated' such claims may be properly canceled by the government as the beneficiary of all claims invalid for lack of assessment work or otherwise, notwithstanding the provision of the 1872 Act (30 USC § 28) that failure to comply with

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We turn to appeal case 70-2 involving the effect of a stipulation under section 7(c). We note that Hamilton and Rauman did not sign the stipulation, their interest having been declared forfeited in a Colorado State court in an action initiated for that purpose as authorized by Revised Statute 2324; 30 U.S.C. § 28 (1970). The effect of the judgment in that proceeding and whether this Department is bound thereby is not presently before us but may be considered in future proceedings.

IBLA 70-2a

In IBLA 70-2a rights were asserted to Leasing Act minerals in the lands covered by unpatented oil shale placer mining claims Comfort Nos. 1 to 4, located in sec. 25, T. 33 S., R. 100 W., 6th P.M., Colorado. The claims had been declared null and void by the Commissioner of the General Land Office on February 3, 1928, following charges brought against the claims in contest No. 11735 on December 6, 1927, and served on the heirs of Anna Dere, deceased, in care of Philip Dere, on December 9, 1927. The manager's decision appealed from held that in view of principles of finality of administrative action, estoppel by adjudication, and res judicata, the Commissioner's decision must be regarded as conclusive.

(fn. 1 cont.)
the statutory assessment work requirements results only in the claim's being open to relocation by others, since failure to maintain the claims under § 37 of the 1920 Act subjects them to disposition under such Act only by leasing by the United States.

* * * * * * *

"5. Default in doing assessment work on oil shale claims under the requirement of the General Mining Act of 1872 (30 USC § 28) that until a patent issues, at least $100 worth of labor or improvements must be expended annually on the claim, does not inure to the benefit of relocators, even though the Act provides that upon failure to comply with the assessment work requirements, the claim shall be open to relocation by others, since § 37 of the Mineral Lands Leasing Act of 1920 (30 USC § 193), which makes available for patent, instead of only leasing, valid pre-existing oil shale claims that are maintained in compliance with the laws under which they were initiated, renders the United States the beneficiary of all claims invalid for lack of assessment work or otherwise; and thus the Department of the Interior has subject matter jurisdiction over contests involving the performance of assessment work."

Review of contest record No. 11735 reveals that a contest complaint bearing that number and issued December 6, 1927, was served upon Philip Dere, one of the heirs of Anna Dere. That contest complaint listed oil shale placer mining locations Sicily Ann Nos. 1 through 4, 7 and 8, Bonny Betty Nos. 1 through 8, Victory Nos. 1, 4, 5, 6, 7, 8, all in T. 3 S., R. 100 W., 6th P.M. The complaint did not list the Comfort Nos. 1 through 4 mining claims, which are the subject of this decision. Although the Commissioner of the General Land Office included the Comfort Nos. 1 through 4 claims with the others mentioned above in letters to the land office register, directing him to institute adverse proceedings and declare the claims to be void upon the default of the contestees, the record does not show that adequate service was ever made of any complaint or letter apprising the mining claimants of the charges made against the Comfort claims. Thus, contest No. 11735 had no effect on the Comfort Nos. 1 through 4 mining claims.

IBLA 70-2b

The mining claims involved in 70-2b were included in mineral patent applications numbers Colorado 07667 or 09072 and were involved in decisions by this Department considering whether or not the mining claimant was barred by principles of administrative finality and res judicata from asserting rights to mining claims declared null and void in the earlier proceedings, Union Oil Company of California et al., supra. It was held that mining claims were not invalidated by earlier contest proceedings if there was inadequate service of the contest charges upon the holders of the mining claims at the time of those proceedings. It was ultimately held that there had not been adequate service. Consequently, the claims were not invalidated as a result of the contests.

Union's verified statement Colorado 0101341-A (conflicting with oil and gas lease Colorado 03228) includes the Fay Nos. 2, 4, 5, 6 and 8 and Florence Nos. 1, 3, 5 and 7, which were involved in former contest No. 11848. At 72 I.D. 326-327 it was found that service of contest No. 11848 was not effectively made upon the holders of the claims. The verified statement also included the Madge No. 1 mining claim. At 72 I.D. 324-325 the supplemental decision points out that the Madge 1 through 8 claims were involved in former contest No. 12717, that service was not adequately made on the holders of the mining claims, and that they were not invalidated. The verified statement also included a portion of the Edna No. 6 mining claim. This mining claim will be discussed below.

Appellant's verified statement Colorado 0101342-A (conflicting with oil and gas lease Colorado 03229-A) included the Florence Nos. 2, 4, 6 and 8 claims, the Madge Nos. 4 and 5 and a portion of the Madge Nos. 3 and 8. The discussion in the preceding paragraph of former contest Nos. 11848 and 12727 shows that those proceedings are not a bar to the assertion of rights under these claims. Further, with respect to Union's patent application Colorado 09072, it was found that service on the record holders of the mining claims was inadequate. 72 I.D. 329, 330.

The Edna No. 6 claim included in appellant's verified statement Colorado 0101341-A was included in contest No. 12574. It was also included in the appellant's mineral patent application Colorado 09072. At 72 I.D. 328 it was held that Union has only an apparent undivided one-half interest in the claim. This was based upon a finding that the holders of the mining claims involved in contest No. 12574 were Chris C. Dere and Joseph M. Schneider, each holding an undivided one-half interest, that Joseph Schneider was served with notice of the contest, and that a decision declaring the claims null and void was effective as to his interest but was not effective as to the interest of Dere, who was not served with notice. The rejection of appellant's mineral patent application as to the undivided one-half interest in the Edna No. 6 claim stemming from Schneider was affirmed. 72 I.D. 346. In Union Oil Company of California v. Stewart L. Udall, Civil No. 9461, United States District Court for the District of Colorado, the Department's decisions were challenged insofar as they rejected Union's mining claims, including the one-half interest in the Edna No. 6 claim. An Order to Close Files and Stay Proceedings was entered March 25, 1967, pending final disposition of appeal in Udall v. Oil Shale Corporation, supra.

Because of the pendency of suit involving the Edna No. 6 claim, final action on Union's verified statement Colorado 0101341-A as to the Edna No. 6 will be suspended pending final resolution of its interests and rights in that claim.

IBLA 70-2c

The basis of the rejection of Equity Oil Company's verified statement, IBLA 70-2c, was that the two mining claims were involved in contest No. 11755, where failure to perform annual assessment work was charged, that notices of the contest were issued on August 4, 1930, and February 11, 1931, by the register of the Denver land office, with copies of the notices being served on R. E. Vickery, Stephen A. Post, R. B. Denton, and W. S. James on or before February 14, 1931. When no answers were filed, the Commissioner of the General Land

Office on July 6, 1931, declared the claims null and void. No appeal was taken from that decision. The Commissioner's decision was regarded as conclusive in view of principles of finality of administrative action, estoppel by adjudication, and res judicata.

Equity states that there were eight individuals who held the claims in 1930 and 1931, naming the original locators, Harry U. Longwell, W. H. Post, Emma J. Boyd, W. C. Kuhlman, Charley Anderson, Fred Campbell, Tobe Barnes and S. A. Post. However, contest No. 11755 was directed against the four persons named in the land office's decision, R. E. Vickery, Stephen A. Post, R. B. Denton, and W. S. James. The contest file shows that the contest complaint dated August 4, 1930, was sent by registered mail to those parties, and there are registered receipt cards signed by R. E. Vickery and R. B. Denton. There is also a card with the addressee's name, W. S. James, signed by May James. No card was signed by Stephen A. Post. However, another complaint was issued to him on February 11, 1931; the registered mail receipt card with his name as addressee signed by Mrs. Bert Marschall.

From the supplemental decision in Union Oil Company, supra, it is clear that if the contest record contains registered mail return receipt cards signed by the parties named in the complaint, the service will be considered adequate. Since the cards show the names of R. E. Vickery and R. B. Denton, service upon them was adequate, and the decision as to their interests in the claims will not be disturbed. However, Union Oil Company also makes it clear that if the card is signed for the contestee by someone else, service will not be considered adequate unless there is written authority in the record showing that the agent was authorized to sign and accept such service for the contestee. There is nothing in the record of contest No. 11755 to show that May James was authorized to sign for Stephen A. Post. It follows that the service as to those contestees was inadequate, and their interests were not affected by that proceeding.

Equity states that it purchased the mining claims in 1954 and established its title in a forfeiture proceeding authorized by 30 U.S.C. § 28, and thereafter obtained a decree quieting title in the District Court in and for Rio Blanco County, Colorado (Civil Action 953 - May 1953). There is some inconsistency in the dates appellant gives and there is need for more evidence of its alleged title to the claims. Assuming that this proceeding was effective, then, relying on the record of contest No. 11755 as showing the record title holders of the mining claims at that time, any interest which Equity now asserts in the claims would stem from them. Since two of the four holders of the claims were improperly served with notice

of the contest proceeding, their two interests were unaffected by that contest. Thus, it was erroneous to reject appellant's verified statement.

IBLA 70-2d

Savage's verified statements in 70-2d, covered the Ohio oil shale placer mining claims Nos. 9-12 and 29-36. The decision rejecting these statements recited that they were declared null and void as a result of contest No. 12790, initiated on June 10, 1931, in which the charge was failure of the claimants to perform annual assessment work. The decision indicated that four out of eight record mining claimants had been served with notice of the contest proceeding, that they failed to file answers, and that the then Commissioner of the General Land Office on October 3, 1931, declared the claims null and void to the extent of the interest of the contestees who were served.

Savage made one contention, which can be partially resolved at this time, concerning the adequacy of service of contest No. 12790 upon the mining claimants then of record. As to the four contestees indicated by the land office as having been served he shows the following:

Contestees	Return Receipt Cards Signed By
J. Taylor	Mrs. J. Taylor
M. Taylor	Mrs. M. Taylor
R. H. Huberty	Mrs. R. E. Huberty
J. O. Kane, dec'd, heir Mrs. J. O. Kane	Mrs. J. O. Kane

Savage asserts that the return receipt cards show that service was not effectual upon these contestees. Under the Department's supplemental decision in Union Oil Company of California et al., supra, his contention is correct as to the first three contestees listed above, since there is nothing in the record to show that the persons who signed the return receipt cards were authorized to do so as agents for the contestees. The service appears effectual as to Mrs. J. O. Kane, since she personally signed the card. Accordingly, the mining claims are considered invalidated as to her apparent 1/8th interest in the claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals, 211 DM 13.5; 35 F.R. 12081, the decisions or orders appealed from are reversed or modified in manner consistent with the above. The Colorado State Director, Bureau of Land Management will proceed in accordance with the secretarial directive to initiate

contest proceedings to inquire into the validity of the several mining claims where the record indicates such proceedings would be in order. All hearings in the PL 585 proceedings (except where not required because of stipulations entered into pursuant to section 7(c)) shall be held suspended pending the termination of the Government contest proceedings. Such contests shall proceed against all mining claims not held invalidated herein, including those as to which stipulations were filed pursuant to section 7(c) of PL 585.

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Newton Frishberg, Chairman

We concur:

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Joan B. Thompson, Member

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Edward W. Stuebing, Member